



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: April 16, 2008
To: Interested Person
From: Jacob Brostoff, Land Use Services
503-823-7198 / BrostoffJ@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 07-162488 AD

GENERAL INFORMATION

Applicant: Shanna and Stephanie Atkinson
3258 NE 79th Ave
Portland, OR 97213

Site Address: 3258 NE 79TH AVE

Legal Description: BLOCK 13 LOT 47&48 TL 16000, GREGORY HTS

Tax Account No.: R344106180

State ID No.: 1N2E29AA 16000

Quarter Section: 2738

Neighborhood: Roseway, Tyler Whitmire at 503-256-1234.

Business District: Portland International District Business Association, Tyler Whitmire at 503-256-1234.

District Coalition: Central Northeast Neighbors, Alison Stoll at 503-823-3156.

Zoning: R5h—Residential Single-dwelling 5,000 with the Aircraft Landing Overlay Zone.

Case Type: AD—Adjustment Review

Procedure: Type II, administrative decision with appeal to Adjustment Committee.

Proposal:

Applicants currently have a 6-foot tall fence that extends to the edge of their property on the northwest and north sides, at the corner of NE 79th Ave. and NE Klickitat. The north property line, the shortest street lot line, is defined in the Zoning Code as the front property line. The front building setback in the R5 zone is 10 feet. The front building setback area as defined by the Zoning Code functions as a side yard for the residence on this corner lot. The fence is the subject of a Code Compliance case because it exceeds the maximum allowed height (3.5 feet) for fences in the front setback. Applicants are requesting an Adjustment to maximum fence height in the front setback.

Applicants have proposed two alternatives to the current configuration of the fence. Alternative 1 is to leave the fence as it is now. This is the applicants' preferred alternative. Alternative 2 is to leave the fence at 6 feet in height along both lot lines, but pull the fence in along the NE 79th (west side) lot line to 15 feet. (See attached site plans.)

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section 33.805.040 A-F.

ANALYSIS

Site and Vicinity: The subject property is a corner lot in a residential neighborhood. The site underwent a lot confirmation in 2005, resulting in two 25'x100' lots of record being confirmed. The lots are irregularly shaped, and the Atkinson property has a short front lot line on NE Klickitat. Due to the orientation of the house, the yard fronting NE Klickitat functions as the side yard for the property, and the yard fronting NE 79th functions as the front yard.

There are other, similar houses nearby, some of them with fenced yards. The transportation system is urban, with a high level of street connectivity and sidewalks. The intersection where the subject property is located is unmarked.

Zoning: R5h—Single-dwelling Residential 5,000 with the Aircraft Land Overlay Zone.

The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Newly created lots must have a maximum density of 1 lot per 5,000 square feet of site area.

The “h” overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport. The height limit for this site is 280 feet above the PDX airport landing strip elevation of 18 feet above sea level (the base zone height limit of 30 feet is more restrictive). The “h” overlay has no impact on this proposal.

Land Use History: City records indicate there are no prior land use reviews for this site, although the site underwent a lot confirmation (PR 05-149956 LS) in 2005, resulting in two 25'x100' lots of record being confirmed.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **March 12, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division

The Office of Transportation (PDOT) responded with concerns about sight lines and visibility at this corner, especially since it is an unsigned intersection. PDOT expressed opposition to Alternative 1 and support for Alternative 2.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 12, 2008. One written response has been received from a notified property owner in response to the proposal. The neighbor raised concerns about pedestrian, cyclist and motorist safety due to lack of visibility, and expressed a preference for Alternative 2.

Staff note: Pedestrian and vehicle safety are specifically discussed in the purpose statement for the fence regulations. The neighbor's concerns are addressed in the findings for Adjustment Approval Criterion A., below.

ZONING CODE APPROVAL CRITERIA**33.805.040 Approval Criteria (Adjustments)**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The fence standards promote the positive benefits of fences without negatively impacting the community or endangering public or vehicle safety. Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. The purposes of the fence standards are to promote the positive aspects of fences and to limit the negative ones.

As proposed, both alternatives would provide privacy, protection for children and pets, and separation from busy streets. The fence as currently configured uses attractive wood materials. However, the fence also has several negative effects, including the creation of a street wall that inhibits community surveillance, and that could hinder the safe movement of pedestrians and vehicles by obstructing lines of sight at the corner. The negative effect of the fence on sight lines and the safe movement of pedestrians and vehicles (including cyclists) could be significant, depending upon the age and experience of the pedestrian and/or vehicle user.

Alternative 2 would have fewer negative effects, especially with respect to the safe movement of pedestrians and vehicles, while still allowing the Atkinsons to benefit from having a fenced yard.

With the condition that the fence be modified as shown in Alternative 2, this approval criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, and

The fence is constructed from attractive wood materials, and is similar to other fences in the neighborhood. A wooden fence, as proposed in Alternative 2, is in keeping with the appearance of the residential area, and would improve livability by providing some private, enclosed side yard space for the Atkinsons. Moving the fence back to 15' from the 79th Ave. property line will result in a safer situation and thereby increase rather than detract from livability.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Only one adjustment is being requested. This criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

There are no City-designated scenic or historic resources on the site. This criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

With the preceding it has been determined that there will be no impacts due to this Adjustment. This criterion is not applicable.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

The proposal is not in an environmental zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

All of the approval criteria have been met. As proposed, Alternative 2 will provide privacy and a usable side yard for the Atkinsons, and will preserve sight lines and visibility for pedestrians and vehicles. With a condition that the fence be modified to match Alternative 2, the Adjustment can be granted.

ADMINISTRATIVE DECISION

Approval of an Adjustment to 33.110.255 to increase the height of a fence in the front setback to 6', per the approved site plan, Exhibit C, signed and dated April 14, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 07-162488 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Within 30 days of this decision being recorded, the fence must be moved so that it is no closer than 15' to the west (NE 79th Ave.) property line.

Decision rendered by:  on April 16, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: April 16, 2008.

Staff Planner: Jacob Brostoff

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on September 14, 2007, and was determined to be complete on March 7, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 14, 2007.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be

waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 30, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **May 1, 2008– the day following the last day to appeal**. A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

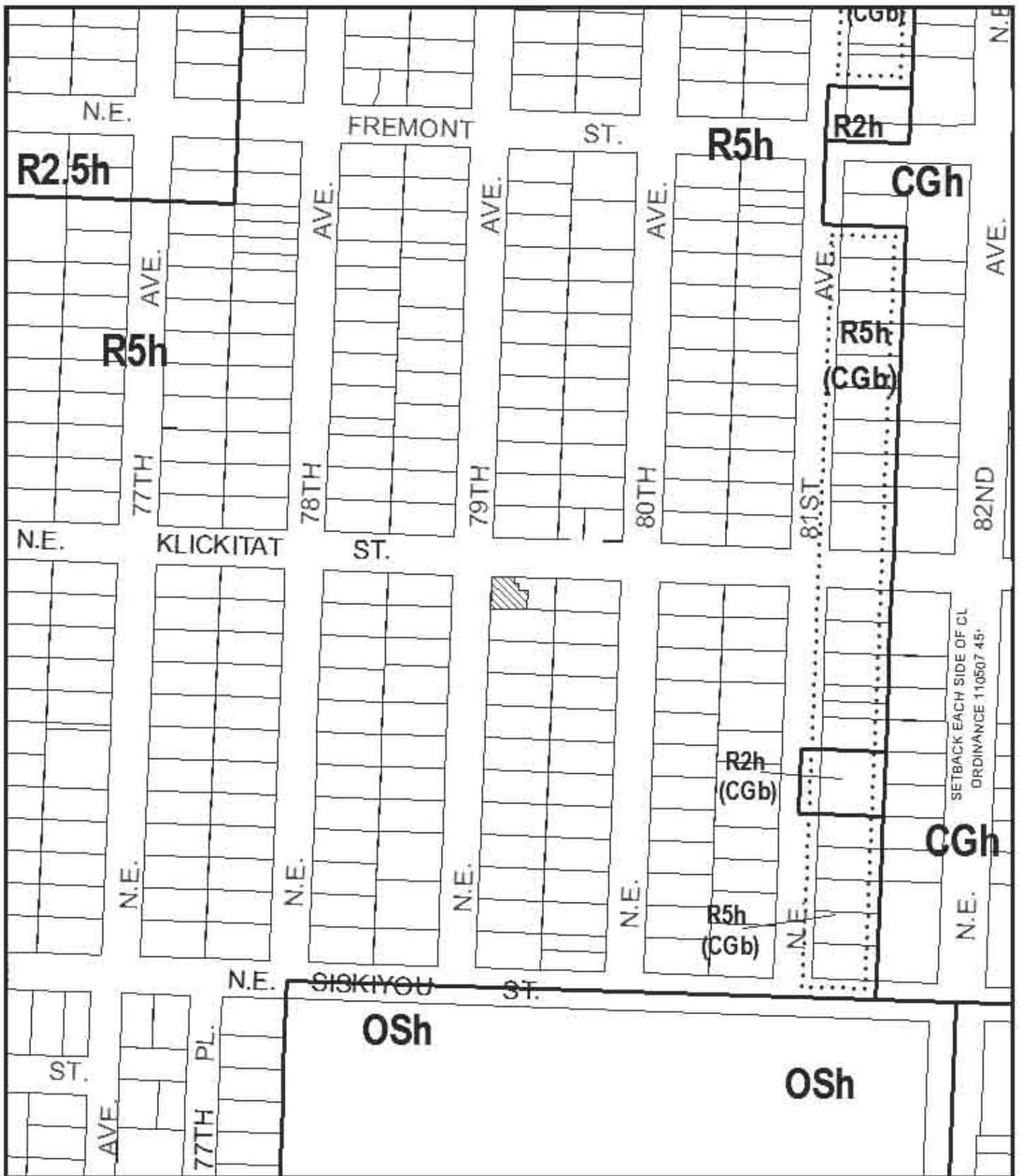
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Response: Office of Transportation
- F. Correspondence: David Lyons, March 17th, 2008, concerns regarding pedestrian, cyclist and motor vehicle safety and support for Alternative 2.
- G. Other: Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



File No.	LU 07-162488 AD
1/4 Section	2738
Scale	1 inch = 200 feet
State_Id	1N2E29AA 16000
Exhibit	B (Sep 19,2007)

WALK	
WAY	X
CH	64 x 101+
TIO	
TOTAL	

WE ARE ASKING TO KEEP THE FENCE THIS THE NEW ADJUSTMENTS THAT WILL BE MADE TO THE FENCE.

City of Portland
Bureau of Development Services

Planner JMB

Date 4/16/08

LU 07-162488 AD

* This approval applies only to the reviews requested and is subject to all conditions of approval.
Additional zoning requirements may apply.

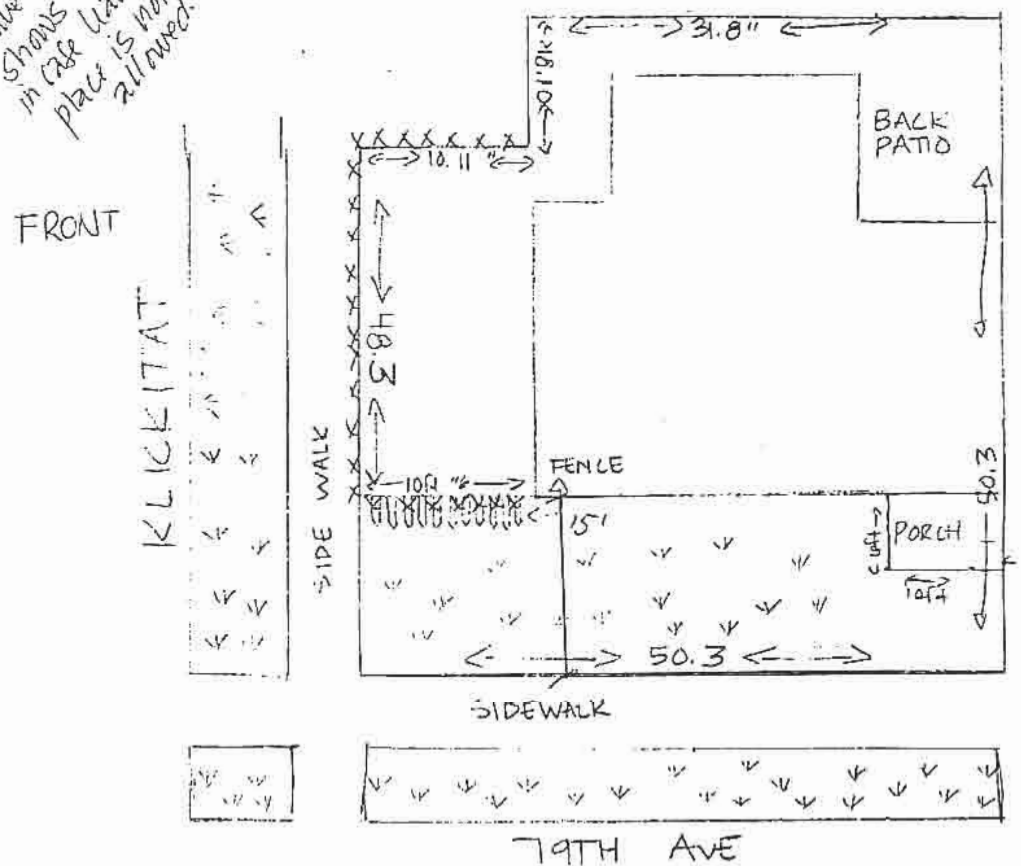
ALTERNATIVE 2

* Note - the existing fence follows the street lot lines (including overhang) and will be set back to the side of the house and not set in front.

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THE fence is 6' high in all areas marked X. Regulations allow 3.5' high fence in the front yard setback area. The adjustment application is to request a waiver to the 3.5' high limit.



SIDE

SITE PLAN

SCALE: 1" = 10'

PROJECT LEGAL _____

PROJECT ADDRESS _____

3256 NE 79th Ave

Portland, Or 97213



EXHIBIT C